

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 269 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF CHATURBHAI M PATEL

Versus

GANESHBHAI TRIKAMBHAI

Appearance:

MR DF AMIN for Petitioners

Ms Manisha Lavkumar, AGP, for Respondent No.2

Respondent NO.1 served

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 26/07/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner has challenged the judgement and order dated 24.12.1984 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN.B.A.658/1980 under section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act").

2 Chaturbhai Manorbhai, father of the present petitioners, was the owner and occupant of two parcels of land bearing Survey No.410/2 admeasuring 15 gunthas and Survey No.414/1/C admeasuring 12 gunthas of land in vilage Ramor of Petlad Taluka. Respondent no.1 claimed to the the tenant of both the parcels of land. The Mamlatdar and Deputy Collector as well as Gujarat Revenue Tribunal held that orig. opponent no.1 i.e. Chaturbhai M Patel (whose heris are the petitioners herein) was in possession of the land in question on 1.4.1957 but in view of the endorsement made on 30.8.1959 by the Circle Officer showing that the possession of the landlord was illegal, respondent no.1 was entitled to be declared as a tenant under section 32G of the Act. It is against the aforesaid concurrent findings that the petitioner has filed the present petition.

3 At the hearing of this petition Mr D.F.Amin, learned counsel for the petitioner, submitted that earlier in the year 1961 enquiry was already made by the Mamlatdar under section 32G of the Act and in the said inquiry the respondent had stated that he had not cultivated the land for the last 4 years and on the strength of the said statement the Mamlatdar closed the proceedings by his order dated 17.3.1961. Again the present enquiry was initiated by the Mamlatdar in the year 1978 on the basis of the aforesaid endorsement. However, such endorsement was also made in respect of the land bearing survey no.410/2 admeasuring 18 gunthas. The proceedings in respect of the said land initiated by the Mamlatdar second time in the year 1978 concluded with the judgement dated 3.4.1980 of the Tribunal in Revision Application No.1420 of 1979 wherein the Tribunal held that respondent no.1 herein had left the possession of the disputed land 4 years before 1961 whereas in respect of the present land, that is, Survey No.414/1, possession was shown to be illegal as per the entry made in 1959. Mr Amin has therefore pointed out both the entries and it appears that same entry was made in respect of both the lands. It is therefore submitted that the Tribunal ought to have followed its judgement dated 3.4.1980 in respect of the other land.

Secondly it is submitted that once the proceedings were closed in the year 1961 the Mamlatdar ought not to have suo motu initiated the proceedings when respondent no.1 had not taken up any proceeding under secction 29 of the Act or under section 32(1)(b).

Thirdly, reliance has been placed on the decision of the Apex Court in the case of DHONDIRAM TATOBA KADAM

V. RAMCHANDRA BALWANTRAO DUBAL XXXVI(1) GLR 344 to contend that even if the tenant was in possession of the land in question and he had voluntarily given up possession of the land, it would not amount to dispossession and, therefore, the Tribunal ought not to have proceeded with the inquiry whether the possession was handed over in accordance with law since it was not the case of respondent no.1 that he was "dispossessed" from the land in question. On the contrary the tenant had himself admitted that he had voluntarily handed over the possession of the land in question as the landlord wanted to cultivate the land.

4 On the other hand, the learned AGP has submitted that the Tribunal as well as the other revenue authorities have given concurrent findings in favour of respondent no.1 and, therefore, this Court may not interfere with the judgement of the Tribunal in this petition under Article 227 of the Constitution of India.

5 As far as respondent no.1 is concerned, in spite of service of notice, none appears for respondent no.1. Since the matter is already listed 21 times and as the matter is pending since 1986, the Court has proceeded to hear and decide this matter today.

6 The Tribunal had decided the revision application in respect of the land bearing no.410 admeasuring 12 gunthas in favour of the petitioner and on the same set of facts the Tribunal has decided the present revision application against the petitioner on the ground that there was a difference in the endorsement made in village form no.6. However, on perusal of the entries it is clear that in both the cases identical entries are made in column no.2 as well as in column no.4. Respondent no.1 had admitted before the Mamlatdar that he was not cultivating the land for four years and that statement was made on 3.8.1958. The question whether respondent no.1 was dispossessed or not did not arise as he had himself admitted that the possession was voluntarily handed over. In view of the aforesaid decision of the Apex Court and in view of the aforesaid statement which was made by the respondent no.1 on 3.8.1958, the Tribunal ought to have taken the same consistent view in respect of the present land bearing survey no.414/1 admeasuring 18 gunthas of land as it did in respect of the land bearing survey no.410/2.

7 In view of the above discussion, the petition is allowed and the impugned orders are set aside.

Rule is made absolute with no order as to costs.

(M.S. SHAH, J.)

(mohd)